

## PERMIT

Folder 2

FACILITY NO.

0319

EXPIRATION DATE

5/9/86

Under the Environmental Conservation Law, Article 27, Title 7, Part 360

☐ CONSTRUCTION☐ INITIAL ISSUE☐ REISSUANCE☒ OPERATION☐ RENEWAL☐ MODIFICATION

X24W02 (22401-0108)

PERMIT ISSUED TO <b>Calleia Bros., Inc.</b>		ADDRESS OF PERMITTEE <b>362 Maspeth Avenue</b>		TELEPHONE NO. <b>(212) 647-0700</b>
LOCATION OF PROJECT Town		County <b>Kings</b>		Environmental Conservation Regional Office <b>Region 2; 2 World Trade Center</b>
DESCRIPTION OF PROJECT <b>Fuel oil waste and motor oil waste recovery facility</b>				ON-SITE SUPERVISOR <b>Lawrence Calleia, Jr.</b>

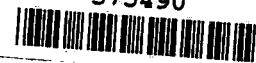
## GENERAL CONDITIONS

1. The permittee shall file in the office of the Environmental Conservation Region specified above, a notice on intention to commence work at least 48 hours in advance of the time of commencement and shall also notify said office promptly in writing of the completion of the work.
2. The permitted work shall be subject to inspection by an authorized representative of the Department of Environmental Conservation who may order the work suspended if the public interest so requires.
3. As a condition of the issuance of this permit, the applicant has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from the said project.
4. All work carried out under this permit shall conform to the approved plans and specifications. Any amendments must be approved by the Department of Environmental Conservation prior to their implementation.
5. The permittee is responsible for obtaining any other permits, approvals, easements and rights-of-way which may be required for this project.
6. By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with Part 360 and the special conditions. Any variances granted by the Department of Environmental Conservation to Part 360 must be in writing and attached hereto.

## SPECIAL CONDITIONS

See attached Special Conditions.

375490



ISSUE DATE <b>5/9/83</b>	ISSUING OFFICER <b>William J. Clarke</b>	SIGNATURE <b>X William J. Clarke</b>
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SOLID WASTE PROJECT NO. X/Y24W02\*

SPECIAL CONDITIONS

- A. The Maspeth Avenue Terminal Resource Recovery Facility (Facility), as constructed, shall be operated in conformance with the information provided in the project application package dated February 29, 1980 and subsequent addenda, the site plan of April 1, 1982 and the closure plan received December 20, 1982, and addenda, all documentation submitted to the New York State Department of Environmental Conservation (DEC) by Kartigener Associates, P.C., Consulting Engineers, on behalf of the applicant. The Facility shall abide by all relevant current and revised regulations as promulgated and enacted into law by the DEC.
- B. The Facility shall be restricted to receiving and reprocessing fuel oil tank bottom wastes and waste motor oils. No other waste shall be accepted at the Facility.
- C. The Facility, in addition to a valid Certificate to Operate under 6 NYCRR Part 360, must also have a valid Industrial Waste Collector Permit to Operate under 6 NYCRR Part 364 to transport and haul waste oil and fuel oil tank bottom wastes. In order to receive waste oil and to ship waste oil, haulers must have valid Industrial Waste Collector Permits under 6 NYCRR Part 364 for the particular waste oil disposal site as identified on their permits and such permits shall be shown to The Facility for verification. A Part 364 permit must be applied for separately; it is not included as part of this permit.
- D. Monthly reports shall be submitted to the DEC Region Two Office, Division of Solid Waste Management. The reports shall specify or list or identify oil types and include all quantities received and removed from the facility site including dates of receipt, receipt number and shipment with locations of disposal site or transfer site location and names of waste haulers with New York State Industrial Waste Collector Permit Number under 6 NYCRR Part 364. Records and copies of all incoming and outgoing shipments of oil waste and oil waste products must be kept on file at the facility site.
- E. The DEC Region Two Office, Division of Solid Waste Management, shall be informed within a period of twenty-four (24) hours of any spills, upset conditions, or conflagrations which may have occurred or taken place at the Facility.
- F. A copy of the Spill Prevention Control and Countermeasures Plan must at all times be kept at the Facility and be accessible to personnel familiar with its provisions and operations in the event of a spill.

\* The applicant for this project is Calleia Bros. Inc., also and hereinafter referred to as Maspeth Avenue Terminal Resource Recovery Facility.

- G. In the event that the Facility is to be closed, the DEC Regional Solid Waste Engineer of the Region Two Office, Division of Solid Waste Management must be notified in writing at least ninety (90) days prior to the proposed date of closure. In the event of closure, the Closure Plan, submitted by Kartiganer Associates, P.C., dated September 30, 1982 and addenda will be in effect.
- H. In the event of either a prospective change in ownership, or of a change of officers of the Facility, the DEC Regional Solid Waste Engineer in the Division of Solid Waste Management, Region Two Office, shall be notified in writing within five (5) days.
- I. The DEC Region Two Office Division of Solid Waste Management shall be sent copies of all current local, state, and federal permits issued to the Facility.
- J. The Facility shall operate Monday through Friday eight (8) hours daily from morning to afternoon.
- K. Failure to abide by any of the General and Special Conditions listed in this permit shall be deemed sufficient grounds for revocation of this permit.
- L. This permit does not confer exemption from or in any way allow or permit the Facility from complying with the requirements of any other local, state, or federal permits, approvals, easements, and rights of way, or laws as required.
- M. Physical and chemical analyses will be required of all processed oil products that are offered for sale or distribution which contain either processed waste oil or tank bottom wastes. Records of all such physical and chemical analyses shall be kept on file at the facility site and be available upon request. The analysis of waste oil and waste oil products shall be fully documented, including a complete description of the methods employed, the results, (accuracy and precision determinations) and a list of references relevant to the method. Physical and chemical analyses required include:
  - 1) As part of the physical analyses performed on all processed oil products containing waste oil and/or tank bottom wastes which are offered for sale or distribution, the following shall be required: fire and flashpoint ( $^{\circ}\text{F}$ ); viscosity; corrosivity heating value (B.T.U./gallon).
  - 2) As part of the chemical analyses performed on all processed oil products containing waste oil and/or tank bottom wastes which are offered for sale or distribution, the following shall be required: sulfur; total halogens; metals such as lead, chromium, beryllium, mercury; and polychlorinated biphenyls (PCB's), and in

addition to analyses for the above constituents of all processed oil products that contain processed waste oil or tank bottom wastes are required to be furnished to the purchaser at the time all such shipments leave the Facility.

- N. Hazardous Waste Manifest Forms shall be used in all processed oil products that are offered for sale or distribution which contain either processed waste oil or tank bottoms wastes.
- O. Records shall be maintained of all quantities of sludge removed from the facility site and all such shipments shall be manifested. Such records shall be maintained at the facility site and be available upon request.
- P. No processed oil product containing waste oil or tank bottom wastes is to be used as fuel within New York City which contains the following: lead in excess of 25.0 ppm, PCB's in excess of 50 ppm, halogens in excess of 1000 ppm, cadmium in excess of 5 ppm, and sulphur as specified in 6 NYCRR 225.
- Q. The following is a list of acceptable analytical methods that may be used for the chemical analyses required in Paragraph M(2):

PCB

S.N. Chesler, et al, "Determination of Polychlorinated Biphenyls in Waste and Lubricating Oils" - NBS Special Publication 584 (November 1980). D.A. Becker, Editor

Halogens

Neutron Activation Analysis  
ASTM D1317 combined with ion chromatography  
ASTM D1317 test for chloring in new and used lubricants (sodium alcoholate method)

Sulfur

ASTM D129 test for sulfur in petroleum products (general bomb method)

ASTM D1552 test for sulfur in petroleum product (high temperature method)

Neutron activation analysis

Lead

ASTM D2788 atomic Absorption method  
Atomic fluorescence spectroscopy

Heat Content

ASTM D240 test for heat of combustion of liquid hydrocarbon fuels by comb calorimeter.

Flash Point

ASTM D93 flash point by Pensky-Martens closed test

R. The Permittee shall obtain and keep in force a cash performance bond of eighty thousand dollars ( \$80,000) payable to the Commissioner of Environmental Conservation, New York State, to ensure that a satisfactory closure is completed.

Liability insurance in the amount of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) annual aggregate exclusive of legal costs must be carried by the permittee.

The permittee must satisfy the above financial surety obligations within sixty (60) days of the effective date of this permit. Submittals demonstrating compliance with the above conditions are to be made to the DEC through the Region 2 office of the Division of Solid Waste Management.

# NOTICE OF PERMIT

for:

☐ CONSTRUCTION

☐ INITIAL ISSUE

☐ REISSUANCE

☒ OPERATION

☐ RENEWAL

☐ MODIFICATION

has been issued to: CALLEIA BROS., INC.

address: 362 MASPETH AVENUE, BROOKLYN, NEW YORK 11211

for a project described as: Fuel oil waste and motor oil waste recovery facility

under the Environmental Conservation Law,  
Article 27, Title 5, Part 360 (Solid Waste Management Facilities)

**NOTE:**

- This Notice of Permit must be posted on the project site in such a manner that it is protected from weather and is in a location readily visible to the public.
- A copy of the Permit with the general and special conditions noted thereon will be shown to anyone upon request.

*William J. Clarke*

William J. Clarke

**Issuing Officer**

2 World Trade Center, Rm. 6126, New York, N.Y. 10047

**Address**

New York State

Department of Environmental Conservation

X24W02 (22401-0108)

**Permit No.**

May 9, 1983

**Issue Date**

May 9, 1986

**Expiration Date**

# PERMIT

Under the Environmental Conservation Law, Article 27, Title 7, Part 360

0282

EXPIRATION DATE  
January 10, 1981

☒ CONSTRUCTION  
☐ OPERATION

☒ INITIAL ISSUE  
☐ RENEWAL

☐ REISSUANCE X24W02  
☐ MODIFICATION

ISSUED TO Maspeth Avenue Terminal source Recovery Facility	ADDRESS OF PERMITTEE 362 Maspeth Avenue Bklyn, NY 11211	TELEPHONE NO. (212)647-0700
LOCATION OF PROJECT 362 Maspeth Avenue Brooklyn	County Kings	Environmental Conservation Regional Office Region 2, 2 World Trade Ctr., NY, NY 10047
DESCRIPTION OF PROJECT Reprocessing fuel oil tank bottom wastes and motor oils involving screening, dewatering, segregation, blending operations		ON-SITE SUPERVISOR Lawrence Calleia, Jr.

## GENERAL CONDITIONS

1. The permittee shall file in the office of the Environmental Conservation Region specified above, a notice on intention to commence work at least 48 hours in advance of the time of commencement and shall also notify said office promptly in writing of the completion of the work.
2. The permitted work shall be subject to inspection by an authorized representative of the Department of Environmental Conservation who may order the work suspended if the public interest so requires.
3. As a condition of the issuance of this permit, the applicant has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from the said project.
4. All work carried out under this permit shall conform to the approved plans and specifications. Any amendments must be approved by the Department of Environmental Conservation prior to their implementation.
5. The permittee is responsible for obtaining any other permits, approvals, easements and rights-of-way which may be required for this project.
6. By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with Part 360 and the special conditions. Any variances granted by the Department of Environmental Conservation to Part 360 must be in writing and attached hereto.

## SPECIAL CONDITIONS

All construction is to be in accordance with submitted plans and drawings with application originally submitted.

In the event that changes in construction as originally submitted are to be made, the Region 2 Office must be notified and applications and plans submitted showing proposed changes.

Upon completion of construction, the Region 2 is to be notified in writing.

DATE January 10, 1980	ISSUING OFFICER Regional Engineer for Solid Waste James Reid, PE	SIGNATURE X <i>James W. Reid</i>
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PERMITTEE COPY

APPLICATION FOR APPROVAL TO OPERATE  
A SOLID WASTE MANAGEMENT FACILITY

PROJECT NO.

DATE RECEIVED

DEPARTMENT ACTION

DATE

☐ Approved ☐ Disapproved

SEE APPLICATION INSTRUCTIONS ON REVERSE SIDE

1. OWNER'S NAME <b>CALIFORNIA BROS. INC.</b>	2. ADDRESS (Street, City, State, Zip Code) <b>362 Maspeth Ave., Bklyn NY 11211</b>	3. Telephone No. <b>(212) 387-8300</b>
4. OPERATOR'S NAME <b>Same</b>	5. ADDRESS (Street, City, State, Zip Code) <b>Same</b>	6. Telephone No. <b>Same</b>
7. ENGINEER'S NAME <b>Kartiganer Assoc. P.C. Consulting Engineers</b>	8. ADDRESS (Street, City, State, Zip Code) <b>555 Route 94, New Windsor, Newburgh, NY 12550</b>	9. Telephone No. <b>(914) 562-4391</b>
10. ON-SITE SUPERVISOR <b>Lawrence Callala, Jr.</b>	11. ADDRESS (Street, City, State, Zip Code) <b>362 Maspeth Ave., Bklyn, NY 11211</b>	12. Telephone No. <b>(212) 387-8300</b>
13. HAS THE INDIVIDUAL NAMED IN ITEM 10 ATTENDED A DEPARTMENT SPONSORED OR APPROVED TRAINING COURSE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date _____ Course Title _____ Location _____		

14. PROJECT/FACILITY NAME <b>Maspeth Ave. Terminal Resource Recovery Facility (Energy)</b>	15. COUNTY IN WHICH FACILITY IS LOCATED <b>Kings, N.Y.C.</b>	16. ENVIRONMENTAL CONSERVATION REGION
17. TYPE OF PROJECT FACILITIES: <input type="checkbox"/> Composting <input type="checkbox"/> Transfer <input type="checkbox"/> Shredding <input type="checkbox"/> Baling <input type="checkbox"/> Sanitary Landfill <input type="checkbox"/> Incineration <input type="checkbox"/> Pyrolysis <input checked="" type="checkbox"/> Resource Recovery-Energy <input checked="" type="checkbox"/> Resource Recovery-Materials <input type="checkbox"/> Other _____		
18. HAS THIS DEPARTMENT EVER APPROVED PLANS AND SPECIFICATIONS AND/OR ENGINEERING REPORTS FOR THIS FACILITY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Date <b>JANUARY 10, 1980</b>		
19. LIST WASTES NOT ACCEPTED		

Wastes other than non-water soluble residual fuel oil tank bottom wastes and waste motor oils.

## 20. BRIEFLY DESCRIBE OPERATION

Reprocessing of residual fuel oil tank bottom wastes and waste motor oils. Process consists of screening, dewatering, fuel oil component segregation, and blending.

Job titles and numbers of persons in each  
Other than upper management there will be: -

One, Operations Manager, (in charge of facility processing, control, quality control and storage. Will also serve as on-site supervisor).

One, Assistant Operations Manager, (duties are same as and to assist operations manager).

One, Laboratory Technician (to analyze all incoming and processed waste oils)  
Two Facility Yardmen (To assist, assistant operations manager plus facility maintenance and housekeeping).

Two Processing Men (to actually process waste fuel oil as per method described above and in preliminary report "Resource Recovery Facility" attached).

## 21. IF FACILITY IS A SANITARY LANDFILL, PROVIDE THE FOLLOWING INFORMATION:

a. Total Useable area: (Acres)

Initially \_\_\_\_\_ Currently \_\_\_\_\_

b. Distance to nearest offsite, downgradient, water supply well \_\_\_\_\_ Feet

c. No. of groundwater monitoring wells

Upgradient \_\_\_\_\_ Downgradient \_\_\_\_\_

## 22. INDICATE WHICH ATTACHMENTS, IF ANY, ARE INCLUDED WITH THIS APPLICATION:

☐ Form 47-19-2 or SW-7 ☐ Operations Plan & Report ☐ USGS Topographic Map ☐ Record Forms  
☐ Construction Certificate ☐ Boring Logs ☐ Water Sample Analysis ☐ None

PRELIMINARY REPORT BY \_\_\_\_\_

## 23. CERTIFICATION:

I hereby affirm under penalty of perjury that information provided on this form and attached statements and exhibits is true to the best of my knowledge and belief. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date \_\_\_\_\_

Signature and Title \_\_\_\_\_



# APPLICATION FOR APPROVAL TO CONSTRUCT A SOLID WASTE MANAGEMENT FACILITY

FOR STATE USE ONLY

PROJECT NO. <b>X24W02</b>	DATE RECEIVED <b>March 6/79</b>
DEPARTMENT ACTION <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	DATE

APPLICATION INSTRUCTIONS ON REVERSE SIDE

OWNER'S NAME <b>Calleia Bros., Inc.</b>	2. ADDRESS (Street, City, State, Zip Code) <b>362 Maspeth Ave., Brooklyn, N.Y. 11211</b>	3. Telephone No. <b>212-647-0700</b>
OPERATOR'S NAME <b>Same</b>	5. ADDRESS (Street, City, State, Zip Code)	6. Telephone No.
ENGINEER'S NAME <b>Kartiganer Associates, P.C. Consulting Engineers</b>	8. ADDRESS (Street, City, State, Zip Code) <b>555 Route 94, Newburgh, N.Y. 12550</b>	9. Telephone No. <b>914-562-4391</b>
ENGINEER'S N.Y.S. LICENSE NO. <b>Herbert L. Kartiganer E.E. 33356</b>	10. TYPE OF PROJECT FACILITIES: <input type="checkbox"/> Composting <input type="checkbox"/> Transfer <input type="checkbox"/> Shredding <input type="checkbox"/> Baling <input type="checkbox"/> Sanitary Landfill <input type="checkbox"/> Incineration <input type="checkbox"/> Pyrolysis <input checked="" type="checkbox"/> Resource Recovery-Energy <input checked="" type="checkbox"/> Resource Recovery-Materials <input type="checkbox"/> Other	

Briefly describe the project including the basic process and major components:

Petroleum fuel oil waste and motor oil waste resource recovery as a usable fuel oil. Process: 1) solid screening; 2) product separation; 3) water & oil separation; 4) blending

Describe location of facility. (Attach a USGS Topographic Map showing the exact location of the facility)

See Attachment 1 enclosed Site Plan Attachment Maspeth Avenue, Brooklyn, N.Y. Newtown Creek/English Kill receiving waters Class II.

County in which facility is located: <b>Kings County, New York City</b>	14. Environmental Conservation Region in which facility is located: <b>Region II</b>				
Municipalities Served by Facility <b>Metropolitan New York area</b>	<table border="1"> <tr> <th>County</th> <th>No. of Municipalities</th> </tr> <tr> <td><b>All N.Y.C. Counties Nassau, Suffolk, Westchester</b></td> <td><b>12-15</b></td> </tr> </table>	County	No. of Municipalities	<b>All N.Y.C. Counties Nassau, Suffolk, Westchester</b>	<b>12-15</b>
County	No. of Municipalities				
<b>All N.Y.C. Counties Nassau, Suffolk, Westchester</b>	<b>12-15</b>				

Describe briefly how the proposed facility relates to the Comprehensive Solid Waste Management Plan for the Municipality. Explain any deviation from that Plan.

N/A

If the facility is other than a sanitary landfill, describe the residues in terms of quantities and types. Also indicate the methods and locations of residue disposal, or, if recyclable, indicate markets:

See attached sheet.

If the facility is a sanitary landfill, provide the following information:		N/A	
a. Total useable area - _____ Acres	e. Distance to nearest airport - _____ miles		
b. Distance to nearest surface water - _____ Feet	f. Expected life of site - _____ years		
c. Depth to nearest ground water - _____ Feet	g. Is site on a flood plain? <input type="checkbox"/> Yes _____ Year Flood <input type="checkbox"/> No		
d. Depth to nearest rock - _____ Feet	h. Predominant type of soil on site: _____ (Use Unified Soil Classification System)		
Anticipated construction starting and completion dates From <b>1 June 1979</b> To <b>15 October 1979</b>		20. Estimated Population Served Current <b>N/A</b> Design _____	
Estimated Cost Total <b>\$1,400,000</b> Annual <b>\$900,000</b>		22. Estimated Daily Tonnages of Solid Waste Current <b>.022</b> Design <b>.09</b>	
Operating Hours per Day <b>8 hrs. Monday thru Friday</b>		24. Are attached plans and specifications in substantial conformance with "Content Guidelines for Plans and Specifications"? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>N/A</b>	

CERTIFICATION:

The undersigned does hereby certify that the information in this application and in other attached statements and exhibits is true, correct and complete to the best of his knowledge and belief.

**8 May 1979**  
Date

**David Calleia** President  
Signature and Title **Calleia Bros., Inc.**

0282

FEBRUARY 17, 1978

**PERMIT**

Under the Environmental Conservation Law, Article 27, Title 7, Part 360

☐ CONSTRUCTION☐ OPERATION☐ INITIAL ISSUE☐ RENEWAL☐ REISSUANCE☐ MODIFICATION

PERMIT ISSUED TO Raspeth Avenue Terminal Resource Recovery Facility		ADDRESS OF PERMITTEE 362 Raspeth Avenue Brooklyn, NY 11211		TELEPHONE NO. (212) 647-7400
LOCATION OF PROJECT Town Brooklyn		County Kings	Environmental Conservation Regional Office. Region 2, 2 World Trade Ctr., NY, NY 10047	
DESCRIPTION OF PROJECT Reprocessing fuel oil tank bottom wastes and motor oils involving screening, dewatering, separation and blending operations			ON-SITE SUPERVISOR Lawrence Collins, Jr.	

**GENERAL CONDITIONS**

1. The permittee shall file in the office of the Environmental Conservation Region specified above, a notice on intention to commence work at least 48 hours in advance of the time of commencement and shall also notify said office promptly in writing of the completion of the work.
2. The permitted work shall be subject to inspection by an authorized representative of the Department of Environmental Conservation who may order the work suspended if the public interest so requires.
3. As a condition of the issuance of this permit, the applicant has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from the said project.
4. All work carried out under this permit shall conform to the approved plans and specifications. Any amendments must be approved by the Department of Environmental Conservation prior to their implementation.
5. The permittee is responsible for obtaining any other permits, approvals, easements and rights-of-way which may be required for this project.
6. By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with Part 360 and the special conditions. Any variances granted by the Department of Environmental Conservation to Part 360 must be in writing and attached hereto.

**SPECIAL CONDITIONS**

1. All construction is to be in accordance with submitted plans and drawings with application originally submitted.
2. In the event that changes in construction as originally submitted are to be made, the Region 2 Office must be notified and applications and plans submitted showing proposed changes.
3. Upon completion of construction, the Region 2 is to be notified in writing.

ISSUE DATE	ISSUING OFFICER	SIGNATURE X
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# NOTICE OF PERMIT

for:



CONSTRUCTION



INITIAL ISSUE



REISSUANCE



OPERATION



RENEWAL



MODIFICATION

has been issued to: MASPETH AVENUE TERMINAL RESOURCE RECOVERY FACILITY

address: 362 MASPETH AVENUE, BROOKLYN, NY 11211

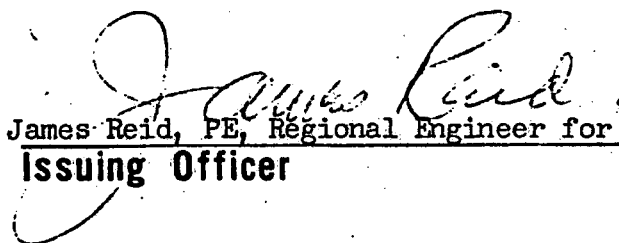
for a project described as: Reprocessing fuel oil tank bottom wastes and waste motor oils involving screening, dewatering, segregation & blending operations.

under the Environmental Conservation Law,

Article 27, Title 5, Part 360 (Solid Waste Management Facilities)

**NOTE:**

- This Notice of Permit must be posted on the project site in such a manner that it is protected from weather and is in a location readily visible to the public.
- A copy of the Permit with the general and special conditions noted thereon will be shown to anyone upon request.

  
James Reid, PE, Regional Engineer for Solid Waste  
**Issuing Officer**

2 World Trade Center, New York, NY 10047, 61st floor  
**Address**

New York State

Department of Environmental Conservation

67-12-2 (8/77)

Project X24W62

0282 January 10, 1980 January 10, 1981  
**Permit No. Issue Date Expiration Date**

APPLICATION FOR APPROVAL TO OPERATE  
A SOLID WASTE MANAGEMENT FACILITY

SEE APPLICATION INSTRUCTIONS ON REVERSE SIDE

PROJECT NO.

V24 W02

DATE RECEIVED

MAY 11, 1979

DEPARTMENT ACTION

☐ Approved ☐ Disapproved

DATE

1. OWNER'S NAME <b>Calleia Bros., Inc.</b>	2. ADDRESS (Street, City, State, Zip Code) <b>362 Maspeth Ave., Brooklyn, NY 11211</b>	3. Telephone No. <b>212-647-0700</b>
4. OPERATOR'S NAME <b>Same</b>	5. ADDRESS (Street, City, State, Zip Code)	6. Telephone No.
7. ENGINEER'S NAME <b>Kartiganer Associates, P.C. Consulting Engineers</b>	8. ADDRESS (Street, City, State, Zip Code) <b>555 Route 94, Newburgh, NY 12550</b>	9. Telephone No. <b>914-562-4391</b>
10. ON-SITE SUPERVISOR <b>Lawrence Calleia, Jr.</b>	11. ADDRESS (Street, City, State, Zip Code) <b>362 Maspeth Ave., Brooklyn, NY 11211</b>	12. Telephone No. <b>212-647-0700</b>
13. HAS THE INDIVIDUAL NAMED IN ITEM 10 ATTENDED A DEPARTMENT SPONSORED OR APPROVED TRAINING COURSE? <input type="checkbox"/> Yes <u>Date</u> <u>Course Title</u> <u>Location</u> <input checked="" type="checkbox"/> No		
14. PROJECT/FACILITY NAME <b>Maspeth Avenue Terminal Resource Recovery Facility</b>	15. COUNTY IN WHICH FACILITY IS LOCATED <b>Kings, N.Y.C.</b>	16. ENVIRONMENTAL CONSERVATION REGION <b>Region II</b>
17. TYPE OF PROJECT FACILITIES: <input type="checkbox"/> Composting <input type="checkbox"/> Transfer <input type="checkbox"/> Shredding <input type="checkbox"/> Baling <input type="checkbox"/> Sanitary Landfill <input type="checkbox"/> Incineration <input type="checkbox"/> Pyrolysis <input checked="" type="checkbox"/> Resource Recovery-Energy <input checked="" type="checkbox"/> Resource Recovery-Materials <input type="checkbox"/> Other		
18. HAS THIS DEPARTMENT EVER APPROVED PLANS AND SPECIFICATIONS AND/OR ENGINEERING REPORTS FOR THIS FACILITY? <input type="checkbox"/> Yes <u>Date</u> <input checked="" type="checkbox"/> No		
19. LIST WASTES NOT ACCEPTED <b>Wastes other than nonwater soluble residual fuel oil tank bottom and waste motor oils</b>		
20. BRIEFLY DESCRIBE OPERATION <b>Reprocessing of residual fuel oil tank bottom wastes and waste motor oils. Process consists of screening, dewatering, fuel oil component segregation, and blending.</b>		
21. IF FACILITY IS A SANITARY LANDFILL, PROVIDE THE FOLLOWING INFORMATION: a. Total useable area: (Acres) <b>N/A</b> Initially _____ Currently _____ b. Distance to nearest offsite, downgradient, water supply well _____ Feet c. No. of groundwater monitoring wells Upgradient _____ Downgradient _____		
22. INDICATE WHICH ATTACHMENTS, IF ANY, ARE INCLUDED WITH THIS APPLICATION: <input checked="" type="checkbox"/> Form 3233 or SW-7 <input checked="" type="checkbox"/> Operations Plan & Report <input type="checkbox"/> USGS Topographic Map <input type="checkbox"/> Record Forms <input type="checkbox"/> Construction Certificate <input checked="" type="checkbox"/> Boring Logs <input type="checkbox"/> Water Sample Analysis <input type="checkbox"/> None <input checked="" type="checkbox"/> Other <b>Rev. 1-4 May 79</b>		
23. CERTIFICATION: I hereby affirm under penalty of perjury that information provided on this form and attached statements and exhibits is true to the best of my knowledge and belief. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. <u>8 May 1979</u> <u>David Calleia</u> <u>President</u> Date Signature and Title Calleia Bros., Inc.		

**RECEIVED**  
N.Y.S.D.E.C.-REGION 2  
MAY 11 1979  
**SOLID WASTE**

# APPLICATION FOR APPROVAL TO CONSTRUCT A SOLID WASTE MANAGEMENT FACILITY

PROJECT NO. <b>X 24W02</b>	DATE RECEIVED <b>MAY 11, 1979</b>
DEPARTMENT ACTION <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	DATE

APPLICATION INSTRUCTIONS ON REVERSE SIDE

OWNER'S NAME <b>Calleia Bros., Inc.</b>	2. ADDRESS (Street, City, State, Zip Code) <b>362 Maspeth Ave., Brooklyn, N.Y. 11211</b>	3. Telephone No. <b>212-647-0700</b>
OPERATOR'S NAME <b>Same</b>	5. ADDRESS (Street, City, State, Zip Code)	6. Telephone No.
ENGINEER'S NAME <b>Kartiganer Associates, P.C. Consulting Engineers</b>	8. ADDRESS (Street, City, State, Zip Code) <b>555 Route 94, Newburgh, N.Y. 12550</b>	9. Telephone No. <b>914-562-4391</b>

ENGINEER'S N.Y.S. LICENSE NO.

**Herbert L. Kartiganer**

**.E. 33356**

10. TYPE OF PROJECT FACILITIES:

☐ Composting ☐ Transfer ☐ Shredding ☐ Baling ☐ Sanitary Landfill ☐ Incineration  
☐ Pyrolysis ☒ Resource Recovery-Energy ☒ Resource Recovery-Materials ☐ Other

Briefly describe the project including the basic process and major components:

Petroleum fuel oil waste and motor oil waste resource recovery as a usable fuel oil. Process: 1) solid screening; 2) product separation; 3) water & oil separation; 4) blending

Describe location of facility. (Attach a USGS Topographic Map showing the exact location of the facility)

See Attachment 1 enclosed Site Plan Attachment Maspeth Avenue, Brooklyn, N.Y. Newtown Creek/English Kill receiving waters Class II.

County in which facility is located:

**Kings County, New York City**

14. Environmental Conservation Region in which facility is located:

**Region II**

Municipalities Served by Facility

**Metropolitan New York area**

County

No. of Municipalities

**All N.Y.C. Counties  
Nassau, Suffolk,  
Westchester**

**12-15**

Describe briefly how the proposed facility relates to the Comprehensive Solid Waste Management Plan for the Municipality. Explain any deviation from that Plan.

**N/A**

If the facility is other than a sanitary landfill, describe the residues in terms of quantities and types. Also indicate the methods and locations of residue disposal or, if recyclable, indicate markets:

**See attached sheet.**

**RECEIVED**

**N.Y.S.D.E.C.-REGION II**

**MAY 11 1979**

**SOLID WASTE**

If the facility is a sanitary landfill, provide the following information:

a. Total useable area - \_\_\_\_\_ Acres  
b. Distance to nearest surface water - \_\_\_\_\_ Feet  
c. Depth to nearest ground water - \_\_\_\_\_ Feet  
d. Depth to nearest rock - \_\_\_\_\_ Feet

**N/A**

e. Distance to nearest airport - \_\_\_\_\_ miles

f. Expected life of site - \_\_\_\_\_ years

g. Is site on a flood plain? ☐ Yes \_\_\_\_\_ Year Flood ☐ No

h. Predominant type of soil on site:  
(Use Unified Soil Classification System)

Anticipated construction starting and completion dates

From **1 June 1979** To **15 October 1979**

20. Estimated Population Served

Current

**N/A**

Design

Estimated Cost

Initial  
**\$1,400,000**

Annual  
**\$900,000**

22. Estimated Daily Tonnages of Solid Waste

Current

**.022**

Design

**.09**

Operating Hours per Day

**8 hrs. Monday thru Friday**

24. Are attached plans and specifications in substantial conformance with "Content Guidelines for Plans and Specifications"? ☐ Yes ☐ No **N/A**

CERTIFICATION:

The undersigned does hereby certify that the information in this application and in other attached statements and exhibits is true, correct and complete to the best of his knowledge and belief.

**8 May 1979**

Date

**David Calleia**

Signature and Title

**President**

**Calleia Bros., Inc.**

# APPLICATION FOR APPROVAL TO CONSTRUCT A SOLID WASTE MANAGEMENT FACILITY

FOR STATE USE ONLY

PROJECT NO. <b>44W02</b>	DATE RECEIVED <b>11/18/1979</b>
DEPARTMENT ACTION <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	DATE

APPLICATION INSTRUCTIONS ON REVERSE SIDE

OWNER'S NAME <b>Calleia Bros., Inc.</b>	2. ADDRESS (Street, City, State, Zip Code) <b>362 Maspeth Ave., Brooklyn, N.Y. 11211</b>	3. Telephone No. <b>212-647-0700</b>
OPERATOR'S NAME <b>Same</b>	5. ADDRESS (Street, City, State, Zip Code)	6. Telephone No.
ENGINEER'S NAME <b>Kartiganer Associates, P.C. Consulting Engineers</b>	8. ADDRESS (Street, City, State, Zip Code) <b>555 Route 94, Newburgh, N.Y. 12550</b>	9. Telephone No. <b>914-562-4391</b>
ENGINEER'S N.Y.S. LICENSE NO. <b>Herbert L. Kartiganer E. 33356</b>	10. TYPE OF PROJECT FACILITIES: <input type="checkbox"/> Composting <input type="checkbox"/> Transfer <input type="checkbox"/> Shredding <input type="checkbox"/> Baling <input type="checkbox"/> Sanitary Landfill <input type="checkbox"/> Incineration <input type="checkbox"/> Pyrolysis <input checked="" type="checkbox"/> Resource Recovery-Energy <input checked="" type="checkbox"/> Resource Recovery-Materials <input type="checkbox"/> Other	

Briefly describe the project including the basic process and major components:

Petroleum fuel oil waste and motor oil waste resource recovery as a usable fuel oil. Process: 1) solid screening; 2) product separation; 3) water & oil separation; 4) blending

Describe location of facility. (Attach a USGS Topographic Map showing the exact location of the facility)

See Attachment 1 enclosed Site Plan Attachment Maspeth Avenue, Brooklyn, N.Y. - Newtown Creek/English Kill receiving waters Class II.

County in which facility is located: <b>Kings County, New York City</b>	14. Environmental Conservation Region in which facility is located: <b>Region II</b>				
Municipalities Served by Facility <b>Metropolitan New York area</b>	<table border="1"> <tr> <th>County</th> <th>No. of Municipalities</th> </tr> <tr> <td><b>All N.Y.C. Counties Nassau; Suffolk, Westchester</b></td> <td><b>12-15</b></td> </tr> </table>	County	No. of Municipalities	<b>All N.Y.C. Counties Nassau; Suffolk, Westchester</b>	<b>12-15</b>
County	No. of Municipalities				
<b>All N.Y.C. Counties Nassau; Suffolk, Westchester</b>	<b>12-15</b>				

Describe briefly how the proposed facility relates to the Comprehensive Solid Waste Management Plan for the Municipality. Explain any deviation from that Plan.

N/A

If the facility is other than a sanitary landfill, describe the residues in terms of quantities and types. Also indicate the methods and locations of residue disposal or, if recyclable, indicate markets:

See attached sheet.

RECEIVED  
N.Y.S.D.E.C.-REGION 2  
MAY 8 - 1979  
SOLID WASTE

RECEIVED  
N.Y.S.D.E.C.-REGION 2  
AUG 14 1979  
SOLID WASTE

If the facility is a sanitary landfill, provide the following information:

a. Total useable area - _____ Acres
b. Distance to nearest surface water - _____ Feet
c. Depth to nearest ground water - _____ Feet
d. Depth to nearest rock - _____ Feet

e. Distance to nearest airport - _____ miles
f. Expected life of site - _____ years
g. Is site on a flood plain? <input type="checkbox"/> Yes _____ Year Flood <input type="checkbox"/> No
h. Predominant type of soil on site: (Use Unified Soil Classification System)

Anticipated construction starting and completion dates From <b>1 June 1979</b> To <b>15 October 1979</b>
---

Estimated Cost Initial <b>\$1,400,000</b> Annual <b>\$900,000</b>
---

20. Estimated Population Served Current <b>N/A</b> Design
22. Estimated Daily Tonnages of Solid Waste Current <b>.022</b> Design <b>.09</b>

Operating Hours per Day <b>8 hrs. Monday thru Friday</b>
---

24. Are attached plans and specifications in substantial conformance with "Content Guidelines for Plans and Specifications"? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>N/A</b>
--

CERTIFICATION:

The undersigned does hereby certify that the information in this application and in other attached statements and exhibits is true, correct and complete to the best of his knowledge and belief.

**8 May 1979**  
Date

See attached Preliminary Report, Rev. 1  
**David Calleia** President  
 Signature and Title **Calleia Bros., Inc.**

Ken  
2 copies -  
- Ken  
- R2 Dec

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

In the Matter of the Application of  
BCF Oil Refining, Inc.  
for Solid Waste Management and  
SPDES Permits pursuant to  
Environmental Conservation Law  
Article 27 Title 7 (Solid Waste  
Management and Resource Recovery  
Facilities) and Article 17 (Water  
Pollution Control) Titles 7 and 8  
and Title 6 of the Official  
Compilation of Codes Rules and  
Regulations of the State of New  
York Part 360 (Solid Waste  
Management), and Parts 750 et seq.  
(State Pollutant Discharge  
Elimination System (SPDES))

ISSUES RULING  
and  
ORDER of DISPOSITION

File No.  
2-6101-00075

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PROCEEDINGS

BCF Oil Refining, Inc., 360 Maspeth Avenue, Brooklyn, NY 11211 (the "Applicant") seeks Solid Waste Management and SPDES Permits from the Department of Environmental Conservation (the "Department" or "DEC"), in order to construct and operate a waste oil storage and reprocessing facility handling an average of 50,000 gallons per day of waste fuel oil, motor oil, and oil-contaminated water (the "Proposed Project"). The facility currently exists, located at 360 Maspeth Avenue, Brooklyn (Kings County), New York City, NY, and is operating under the terms of DEC Order on Consent, File Nos. R2-3307-90-11, R2-2653-89-11, R2-2855-90-03, and R2-3028-90-05. The facility's maximum storage capacity is 800,000 gallons in 15 tanks. Reprocessing consists of screening, dewatering, and blending. Reprocessed oil will be sold as fuel oil to be burned in industrial, commercial, or apartment building boilers, as prescribed by law. Process residue will be transported by licensed waste haulers to an authorized hazardous waste disposal facility. Process wastewater will be treated in an oil-water separator and discharged to Newtown Creek.

Statutory and regulatory provisions applicable to processing this type of application are: Environmental Conservation Law ("ECL") Article 3, Title 3 (General Functions); Article 70 (Uniform Procedures); Article 27 Title 7 (Solid Waste Management and Resource Recovery Facilities) and Article 17 (Water Pollution Control) Titles 7 and 8; and Article 8 (Environmental Quality Review). Also applicable are Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6

Post-It brand fax transmittal memo 7671

# of pages • 10

To	Paul Gallay, Esq.	From	Frank Montcalo
Co.	NYSDEC-Region 2	Co.	NYSDEC
Dept.		Phone	(518) 457-3468
Fax	(718) 482-4962	Fax	(518) 485-7714

NYCRR") Part 621 (Uniform Procedures); Part 624 (Permit Hearing Procedures); 6 NYCRR Part 360 (Solid Waste Management), Parts 750 et seq. (State Pollutant Discharge Elimination System (SPDES)); and Part 617 (SEQR).

DEC Region 2 Staff ("Staff") issued a Notice of Complete Application ("NOCA") for the Proposed Project, which was published on March 25, 1992 in Newsday and DEC's Environmental Notice Bulletin ("ENB"). Staff issued permits dated August 21, 1992 which contained a number of conditions that Applicant challenged. By letter dated February 23, 1993, Staff modified these permits, essentially adopting all but two of the changes requested by Applicant. By March 8, 1993 letter from its counsel, Applicant continued to dispute the propriety of the permits' conditions in two respects, (A) the funding of an environmental monitor, and (B) a stated PCB detection limit.

On May 3, 1993 the DEC Office of Hearings received from Staff a request to schedule a public hearing to resolve the dispute. On May 4, 1993, the undersigned, Frank Montecalvo, was assigned to be the Administrative Law Judge (the "ALJ") who would hear the matter.

DEC Staff was represented at all stages of these proceedings by Paul A. Gallay, Esq., Regional Attorney.

The Applicant was represented at all stages of these proceedings by Stillman, Friedman & Shaw, PC; Julian W. Friedman, Esq., of counsel.

In a conference call on May 21, 1993 between the undersigned and counsel for Staff and the Applicant, it was indicated that the parties viewed the proceeding as arising out of a 6 NYCRR 621.13 permit modification request to change the two disputed conditions, rather than an initial application for the permits themselves (even though Applicant had challenged the two conditions, among others, upon the permits' initial issuance). With regard to the dispute over the environmental monitor, both parties indicated that the facts were essentially recited in Mr. Friedman's March 8, 1993 letter, and that the issue is essentially a legal one. The parties agreed that the issue would be addressed "on papers" (briefs and affidavits of involved persons) rather than at a hearing, and would be determined employing an "arbitrary and capricious" standard to the permits' requirement. In this regard, the appropriateness of an "estoppel" against the Department, arising from the terms of a prior Consent Order, would be considered. The parties further agreed to a hearing date of August 26, 1993.

Upon review of this matter with Hearings Counsel, the undersigned concluded that this matter must be heard and advertised as an initial permit application rather than a



modification, since the disputed matters arose on issuance of the permit, and not as a result of later circumstances. The parties were informed of this by letter dated May 29, 1993.

The Notice of Public Hearing (the "Notice") was issued July 1, 1993, and was published in New York Newsday and the ENR on July 14, 1993. Notice was also directly mailed on July 12, 1993 to the clerk or chief executive officer of Brooklyn (Kings County), New York City, as well as to other persons deemed interested in this proceeding.

The Notice deemed Staff's August 21, 1992 permits as drafts, and stated Staff's tentative determination that the Proposed Project, if carried out in accordance with the conditions of the permits, as modified by Staff's February 23, 1993 letter, would meet all applicable statutory and regulatory requirements, and, therefore, Staff would issue the requested permits. It was also noted that the Applicant had agreed to all terms and conditions of the draft permits, as modified, except for two disputed conditions which were to be resolved by the hearing:

- (A) Applicant wanted the environmental monitor fund requirements (Special Condition 18, draft SWMF permits) to be waived; and
- (B) Applicant wanted the PCB detection limit in its SPDES Permit (Condition found in draft SPDES Permit Part 1, p 7 of 7 (a) Action code 19 outfall 001) raised from 0.065 ug/l to 0.5 ug/l.

The Notice indicated that the parties believed dispute (A) was purely a legal issue, and that dispute (A) was to be addressed by briefs due on the filing date for Party Status requests, August 16, 1993.

By letter dated August 9, 1993, Applicant withdrew its challenge to the PCB testing condition (item (B) above), indicating that in the course of preparing for the hearing, Applicant discovered that EPA testing Method 608 could be modified to test for the 0.065 ug/l PCB detection limit that Staff had proposed to require.

No one requested Party Status to intervene in the proceeding.

On August 16, 1993, the undersigned received Staff's and Applicant's briefs and supporting affidavits on the environmental monitor dispute. Staff requested an opportunity to respond to Applicant's brief. Applicant later made a similar request. By letter of August 19, 1993, I told the parties they could make their responses via oral argument at the hearing, since the hearing still had to be convened to receive public comment in spite of the resolution of the PCB detection limit dispute.

As advertised, I convened the public hearing on Thursday, August 26, 1993, at the NYSDEC Region 2 Headquarters, 47-40 21st Street, Long Island City, NY, with a public statement session beginning at 10:00 AM. No one wanted to make a statement for the record. Also, I received no written comments, in spite of the Notice's invitation to file comments through the hearing date. Therefore, no summary of the public's comments is attached to this ruling. The proceedings moved directly to the Issues Conference, at which oral argument on the environmental monitor dispute was taken.

The stenographic transcript of the August 26, 1993 proceedings was received September 29, 1993. This matter is now ready for review.

#### THE ENVIRONMENTAL MONITOR DISPUTE

##### *The Contested Permit Condition*

Special Condition No. 18 provides (in part) as follows:

"Within thirty (30) days after the effective date of this permit, permittee shall pay to the New York State Department of Environmental Conservation ... a sum of \$25,000 (in the form of a certified check or money order) to be placed in an account for DEC's compliance and monitoring activities for this permitted facility. Monies from said sum shall be applied for payment of the first-year costs of said compliance and monitoring activities, and shall be subject to quarterly revision by DEC. Subsequent quarterly payments shall be made by permittee for the duration of the permit, to provide an account balance sufficient to maintain the annual cost assessment for compliance and monitoring activities by DEC at the facility. ..."

##### *Summary of Applicant's Position:*

Applicant contends that prior to completion of the pending permit application, and following intensive negotiations, it had entered into an Order on Consent (the "Consent Order", copy attached hereto as Appendix A) with DEC on April 15, 1991 to settle certain claimed violations of the ECL. Applicant contends that when viewed in context with the Consent Order and negotiating history, DEC's attempt to impose Special Condition 18 is arbitrary and capricious, and offends basic fairness and due process. Applicant does not, however, contest DEC's general authority to impose a monitoring fund contribution as a permit condition, but, rather, submits that it would be wrong for DEC to impose the requirement here.

Applicant contends that the Consent Order imposed "total monetary penalties" in the amount of \$50,000, \$10,000 of which was to fund the environmental compliance monitor program. Although Applicant expressly agreed to "pursue diligently" its

permit application, the Consent Order was silent regarding any obligation of Applicant to make additional contributions toward funding monitoring activities. Moreover, at no time in the negotiations leading to the Consent Order did DEC ever refer to the monitoring fund described in Special Condition 18 or otherwise indicate that DEC would demand more than the Consent Order's \$10,000 for a monitoring contribution.

In essence, Applicant argues that DEC is now reneging on its agreement as embodied in the Consent Order, which represented a "global settlement" of a number of matters DEC raised regarding application of the ECL and regulations to Applicant's Brooklyn facility. Applicant points out that the settlement agreement is a contract, governed by the ordinary rules of contract interpretation. The \$10,000 contribution was bargained for. Applicant was led to believe that such contribution was its sole obligation in connection with a monitoring fund. As explained in the affidavit of its President, Applicant would not have entered into the Consent Order had it known that instead of \$10,000, \$35,000 would be required for monitoring costs, with the latter figure subject to quarterly replenishment as directed by DEC. Applicant contends it could not and cannot afford this burden.

Applicant points to the language in the Consent Order imposing the \$10,000 payment (under "1. Monetary Penalties," ¶IV) which states that all monitors hired under the program "shall be responsible for the oversight of solid waste management facilities operating with permits or under consent orders in New York City" and argues that it contradicts the notion that the \$10,000 payment was only intended to monitor Applicant itself during the interim between consent decree and the permit. Applicant also argues, in essence, that the Consent Order's use of the word "fees" (where it states that nothing in the order will relieve the respondent of the obligation to pay fees, etc.) should not be construed to encompass quarterly payments to be determined because "fees" is commonly understood to be a "fixed charge."

Applicant contends the DEC should not now be permitted to ignore either its own conduct or the consequence thereof. DEC's attempt to inflate the monitoring contribution by the device of special permit conditions is "shocking to one's sense of fairness," thus not within the realm of administrative discretion. An agency may not require an applicant to submit to a licensing process and later unilaterally change its terms pursuant to a vague, catchall regulatory provision. Such action is arbitrary and capricious. Special Condition 18 should be waived.

**Summary of Staff's Position:**

Staff contends that Applicant's facility operated from April 1991 until February 1993 "(when the challenged permit was issued)" pursuant to the April 1991 Consent Order. The Consent Order cited Applicant for violations of NY environmental law including: (a) operating the facility from May 1986 until April 1991 without solid waste management permits; (b) operating the facility so as to discharge waste water exceeding the limits of certain parameters specified its SPDES permit; and (c) operating the facility as a Major On-Shore Storage Facility without obtaining the required licenses, filing needed safety plans and reports, or paying the requisite fee. Staff argues that for these violations, it imposed the following remedies: (a) payment of \$10,000 to the NY Oil Spill Compensation Fund; (b) payment of \$30,000 to the NY State Environmental Enforcement Account; and (c) payment of \$10,000 for use in a DEC-managed environmental compliance monitor program.

Staff contends that the Order stated these remedies were strictly to compensate DEC for prior violations; and further stated that it was not a permit, but only "temporary authorization" for the Applicant herein to continue operating the facility. Staff argues that as a "temporary" authorization, the Consent Order's terms control only during the period prior to permit issuance, with the provisions of the permit superseding the Consent Order. In the Consent Order DEC explicitly retained the right to impose additional conditions including additional fees and environmental protection measures.

Staff contends that Applicant's argument ignores the distinction between consent orders (designed to resolved past violations) and permits (designed to ensure environmentally sound future operation). Applicant's past violations were resolved through the payments which included the \$10,000 monitoring fee. Applicant was never told that it could "insure" itself from imposition of reasonable costs as part of the permits that would be issued to replace the Consent Order, nor that the \$10,000 payment was the only monitoring requirement that would be imposed. The right to impose further fees was expressly reserved in the Consent Order.

Staff essentially argues that even if it had not expressly reserved its right to impose additional fees, it did nothing to mislead Applicant into thinking there would be no more monitoring fees; and that if Applicant assumed this was the case, the assumption was unilateral on Applicant's part and without regard to DEC's reservation of rights.

# RULINGS and DISCUSSION

Rulings: (A) No substantive and significant issues exist which require an evidentiary hearing to resolve. (B) Applicant has not shown sufficient cause to warrant disturbing Staff's initial determination to issue the permits with Special Condition 18 attached. (C) Therefore, the hearing may be cancelled and the matter remanded to Staff to complete processing of the application.

## Discussion:

There are clearly no facts that have been placed in dispute. Neither party disputed the other's version of the facts. Applicant did not contest the Department's need for an environmental monitor (conceding the monitoring will be whatever Staff determines is appropriate; see Transcript p. 40). Rather, the dispute is solely over what the facts mean legally -- whether the circumstances involving the Consent Order now make it wrong for DEC to impose Special Condition 18.

The scope of the Consent Order must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it. See Alliance to End Repression v City of Chicago, 742 F2d 1007, 1012 (7th Cir. 1984).

Review of the Consent Order reveals that it was intended to (a) settle pending charges, and (b) provide authority for the Respondent (the Applicant) to operate its facility on a temporary basis (i.e., 120 days and any renewal periods DEC may, in writing, agree to) while it applied for the requisite permits. The Consent Order expressly states that it is not a permit ("2. Solid Waste Permit Compliance," §V), and that it constitutes the entire agreement of the parties (last paragraph thereof).

There is nothing in the Consent Order to indicate that any of its provisions were intended to govern after its expiration. If there is any implication from the language of the Consent Order that the \$10,000 monitor payment also applies to Applicant's future operations (I do not contend that it does), the implication would only apply to the period of time that Applicant operates under the Consent Order's temporary authority. Given the Consent Order's purpose, as indicated by its language, the fact that Staff did not indicate in negotiations that it would impose a monitoring payment requirement in its permit is not surprising -- nor does it afford basis for relief. The Consent Order only purports to settle prior charges and provide temporary operating authority -- nothing more. Permit conditions were not addressed by the Consent Order.

If Applicant somehow came to believe that it was also settling all future requirements regarding monitoring funding, it was a mistake on its part since that is not the way the Consent Order is written, and Staff had not discussed the subject. A unilateral mistake under circumstances similar to those here would not afford a basis for relief from a contract. See American Law Institute Restatement of the Law, Second; Contracts 2d §§151 and 153.

Applicant has shown no basis to disturb Staff's determination to impose Special Condition 18.

Since no substantive and significant issues exist which require an evidentiary hearing to resolve, the hearing may be cancelled.

#### APPEALS

Pursuant to 6 NYCRR 624.6 (d), "The ruling of the ALJ setting forth the issues for the hearing may, within three days of the ruling, be appealed in writing to the commissioner, who will decide the appeal within five days of receipt. Other parties may submit briefs in support of or in opposition to the ALJ's ruling. Notice of the appeal and a copy of all briefs submitted in support thereof shall be given to the ALJ and all parties to the hearing..."

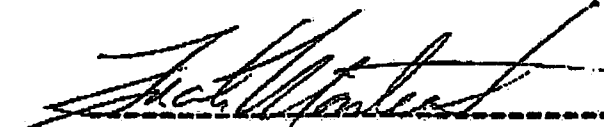
Appeals to the Commissioner are to be sent to the following address: Commissioner Thomas Jorling, c/o Robert Feller, Assistant Commissioner; NYS Dept. of Environmental Conservation; 50 Wolf Road; Albany, NY 12233-1550. (See Service List attached for other addresses).

Any appeal herein must be received at the above address no later than close of business November 3, 1993. Replies are due one week later.

**ORDER OF DISPOSITION**

Subject to the Commissioner's determination of any appeals which might be filed herein, absent the existence of issues requiring adjudication, the record is closed, the adjudicatory hearing is cancelled pursuant to 6 NYCRR 624.6(c), and the matter is remanded to Department Staff to complete processing of the application in accordance with the Rulings herein.

October 27, 1993  
Albany, New York



Frank Montecalvo,  
Administrative Law Judge

Attachment (on Mailed copy only): Appendix A - Consent Order

To: Official Service List attached via Mail and Fax

OFFICIAL SERVICE LIST - October 27, 1993

NAME OF HEARING: BCF Oil Refining, Inc.; Application No. 2-6101-00075

Solid Waste Management and SPDES Permits

STAFF: DEC Region 2 c/o

Paul A. Gallay, Esq., Regional Attorney  
NYSDEC Region 2 Division of Legal Affairs  
47-40 21st Street

Long Island City, NY 11101

FAX 718 482-4962; PHONE: 718 482-4965

APPLICANT: BCF Oil Refining, Inc. c/o

Stillman, Friedman & Shaw, PC

425 Park Avenue

New York, NY 10022

attn: Julian W. Friedman, Esq.

FAX 212 223-1942; PHONE: 212 223-0200

ALJ:

Frank Montecalvo

Department of Environmental Conservation

Office of Hearings

50 Wolf Road, Room 409

Albany, NY 12233-1550

FAX 518 485-7714; PHONE 518 457-3468

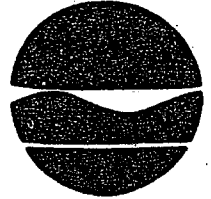


Ken Brezner

**New York State Department of Environmental Conservation**  
47-40 21st Street, Long Island City, New York 11101

February 23, 1993

Julian W. Friedman, Esq.  
Stillman, Friedman & Shaw, P.C.  
425 Park Avenue  
New York, NY 10022



Thomas C. Jorling  
Commissioner

Re: BCF Oil Refining, Inc.  
NYSDEC Permit No. 2-6101-00075/1-0  
SPDES Permit No. NY-0036609

Dear Mr. Friedman:

Reference is made to your letter to this Department dated September 17, 1992 in which you requested an adjudicatory hearing pursuant to 6 NYCRR Part 621. The letter then listed several of the Special Conditions of the Solid Waste Management Facility Permit and SPDES permit which BCF wishes to have modified. We have reviewed the request and our responses to the requests for these modification are set forth in the body of this letter. For the sake of clarity, we have listed your request first, followed by our response.

Special Condition No. 4

*Comment: Special Condition No. 4 contains a time table for the testing to be performed by BCF on its storage tanks. That schedule sets forth various deadlines phrased in terms of the end of each calendar year (e.g., for the year ending 12/31/92, the year ending 12/31/93, etc.).*

*BCF hereby requests that the tank testing schedule be modified to begin with the twelve months ending August 31, 1993, and to continue in 12-month periods ending on August 31 of each succeeding year.*

Response: The Department has no objection to this request. The permit is hereby amended to reflect the change in the testing schedule to end on August 31 of each year, beginning with August 31, 1993.

*Comment: In the paragraph on page 4 of the permit immediately following the tank testing schedule, the following phrase appears: "...permittee must immediately locate the sources of the petroleum contamination." The word "immediately" was not included in the draft Special Conditions which B.C.F. received from the DEC in June 1992 and B.C.F. requests the deletion of that word from Special Condition No. 4 of the permit...The sentence under consideration applies to leaks indicated by "inspections, the leak detection systems, or the groundwater wells". It is the last reference - to the groundwater wells - that raises the real problem here, since*

*those wells cannot possibly be under continuous 24-hour inspection. Therefore, if a groundwater well indicates a leak, the probability is that the leak occurred years before its discovery. As such, the risk exists that B.C.F. will be deemed not to have acted "immediately" after the well "indicate[s]" that the tanks are leaking".*

*To avoid this problem, B.C.F. suggests that the reference in this sentence to groundwater wells be deleted, that the words "upon learning of such condition" be inserted after the word "immediately", or that the word "immediately" be deleted.*

Response: The Department has no objection to the modification of the language in Special Condition No. 4. The words "or groundwater wells" has been deleted and the wording "immediately" has been changed to "immediately upon learning of such condition". In addition, if the samples from the groundwater wells, taken on the schedule mandated in the MOSF license, indicate that there is petroleum contamination, B.C.F. shall, as soon as technically practical and feasible, find the source of the contamination.

#### Special Condition No. 5

*Comment: Paragraph 5 of schedule A of the Order on Consent requires monthly reports, but Special Condition No. 5 calls for such reports to be filed with the DEC on a quarterly basis. B.C.F. simply requests clarification that the language of the Special Condition in the permit itself supersedes the language in the Order on Consent.*

Response: The language in Special Condition No. 5 of the permit supersedes that language in the Order on Consent. B.C.F. must submit reports to the Department on a quarterly basis.

#### Special Condition No. 11

*Comment: The 30-day deadline provided for the removal of sludge is not adequate. The reason is that given the nature of B.C.F.'s operation, the amount of sludge removed from the tanks in any 30-day period would not be sufficient to fill up a dumpster. Consequently, the imposition of a 30-day deadline would require B.C.F. to bear the additional cost of removing and replacing dumpsters which are only partially full. B.C.F. requests that Special Condition No. 11 be modified to change the deadline to 90 days.*

Response: This request is granted. Special Condition number 11 now reads, in part: "After sludge is removed from the tanks, it must be removed from the facility within 90 days."

Special Condition No. 15

*Comment: B.C.F. hereby requests that this Condition be deleted from the Permit. This requirement of an "energy balance" is applicable to solid waste incinerators, but it is not included in Title 6 NYCRR Section 360-12 or Section 360-14, the regulations applicable to recyclables handling and recovery facilities and waste oil facilities.*

**Response:** This request is granted. Special Condition number 15 has been deleted from the Permit.

Special Condition No. 18

*Comment: B.C.F. requests the deletion of this Special Condition in its entirety. It was never raised in any of the discussions which led to the Order on Consent and was not included in the draft Special Conditions which the DEC sent to B.C.F. for review. Moreover, we are aware of no authority for the imposition of such a condition.*

*B.C.F. respectfully submits that Special Condition No. 18 in fact amounts to an increase in the Monetary Penalties which were imposed upon it by the Order on Consent, and which it has already paid. Moreover, the open-ended nature of Special Condition No. 18 exposes B.C.F. to a monetary penalty with virtually no limit - exactly the kind of thing which litigants avoid by entering into settlements. I can assure you that had Special Condition No. 18 been something which the DEC requested at the time the Order on Consent was being negotiated, B.C.F. would never have agreed to this provision.*

**Response:** The DEC has the authority to impose any permit condition that is rationally related to protecting the environment (see ECL-0101, 3-0301; 6 NYCRR 360-4.1[a]; 69 NY2d 355, 363; CID Landfill, Inc. v DEC, 4th Dept., November 16, 1990). The enforcement authority of the DEC is found in ECL Article 71; and DEC's power to enter property and perform inspections are found in ECL Sec. 3-0301(1)(t.), Sec. 3-0301(2)(g) and in various places throughout the ECL. Certain types of facilities, sites and activities have the potential to negatively impact public health and/or the environment if not properly constructed and operated. The daily operation and management of a solid waste transfer station and/or recyclables handling and recovery facility has been determined to be of such a nature as to warrant close monitoring by the Department. Therefore, the DEC has established a monitoring program, under which all permitted transfer stations and recyclable handling and recovery facilities are required to participate, to ensure compliance with the terms of the permit. The on-site environmental monitoring program has been in existence for approximately 8 years.

The \$25,000 fee your client is required to pay is a minimum account balance required as a Special Condition in the permit to operate. This fee will not necessarily be repeated each year

of the permit; instead, it will simply be necessary for B.C.F. to maintain this amount on a quarterly basis. The actual cost to B.C.F. each year will depend on the number of inspections DEC must perform to guarantee compliance with the ECL, which will in turn depend on the quality of B.C.F.'s operations.

The monetary penalties imposed by the Order on Consent were levied as fines for B.C.F.'s violation of the ECL. The Environmental Monitor Fund was established as a wholly separate fund to be contributed to by all permitted recyclables handling and recovery facilities. The payment of the penalties established by the Order on Consent have no bearing on the fee levied for the monitoring fund. This fee is established based on the potential for each individual facility for environmental impact.

Therefore, given DEC's clear legal authority to institute and enforce such a permit requirement, your request to delete Special Condition number 18 is denied. Within ten (10) days of the date of this letter, you will be required to comply with this Special Condition and submit the monitoring fund as stated in your permit.

#### SPDES Permit

*Comment: With respect to the SPDES Permit, B.C.F.'s only requested modification relates to Action Code 19 on page 7. The last line of the first paragraph of Action Code 19 refers to "a Method Detection Limit of 0.065 ug/l." B.C.F. is informed by its engineer that existing testing procedure do not allow a Method Detection Limit of 0.065 micrograms per liter (i.e., 65 parts per trillion). Therefore, it is B.C.F.'s belief that this figure should be "0.65 ug/l", which B.C.F.'s consulting engineer says existing testing methods can attain.*

Response: On January 9, 1990 NYSDEC's Region 2 Water Unit contacted B.C.F. by letter and stated that B.C.F. would be required to attain an analytical detection limit of 0.065 ug/l for PCB's in the wastewater samples. On January 31, 1990, B.C.F.'s consulting engineer (Kartiganer Associates) responded to DEC stating that the technical director of their analytical laboratory had indicated that the detection limits were achievable. Copies of both letters are attached for your reference. The Department must therefore deny your request to alter the detection limit from 0.065 ug/l to 0.65 ug/l for PCB in the wastewater samples.

In accordance with 6NYCRR Part 621.14 you may, within fifteen (15) calendar days of mailing of this notice, submit a written statement to the Department, giving reasons why the permit should be modified, request a hearing, or both. The modifications approved herein become effective the date of this notice.

Julian W. Friedman, Esq.  
B.C.F. Oil Refining, Inc.  
February 23, 1993  
Page 5

If you have any questions or comments regarding this letter, please call me at (718) 482-4997.

Sincerely,



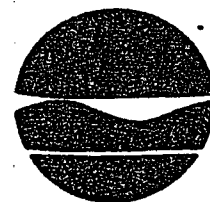
John F. Cryan  
Deputy Regional Permit Administrator

Encl.

JFC:jh

cc: Salvatore Cortese - B.C.F. Oil Refining, Inc.  
Paul Gallay - NYSDEC Regional Attorney  
Ken Brezner - NYSDEC Solid Waste Unit  
Joseph Mandala - NYSDEC Water Unit  
Vichit Aramsombatdee - NYSDEC Water Unit

New York State Department of Environmental Conservation  
47-40 21st Street, Long Island City, New York 11101



Thomas C. Jorling  
Commissioner

January 9, 1990

Salvatore Cortese, President  
BCF Oil Refining, Inc.  
360 Maspeth Avenue  
Brooklyn, New York 11211

Dear Mr. Cortese:

A reconnaissance inspection was performed at the BCF Oil Refining Inc. Facility on November 9, 1989. No samples were taken from the facility.

A review of the BCF discharge monitoring reports submitted to NYSDEC for the period July 1, 1989 to November 30, 1989 indicated the following effluent limitations violation.

<u>Outfall</u>	<u>Parameter</u>	<u>Permit Value</u>	<u>Reported Value</u>	<u>Period</u>
002	Copper	0.4 mg/l Daily Avg.	0.58 mg/l	7/89

The enforcement case has been initiated for the aforementioned violation and forwarded to our regional attorney for a non-compliance action.

The following will highlight the unacceptable results reported in the BCF discharge monitoring reports.

<u>Outfall</u>	<u>Parameter</u>	<u>Permit Value</u>	<u>Reported Value</u>	<u>Period</u>
002	PCB	0.001 mg/l Daily Avg.	<0.002 mg/l	7/89
	PCB	0.001 mg/l Daily Avg.	<0.01 mg/l	10/89

BCF must inform the lab that NYSDEC requires attainment of 0.065 ug/l as the analytical detection limit for PCB's in wastewater samples no later than February 1, 1990.

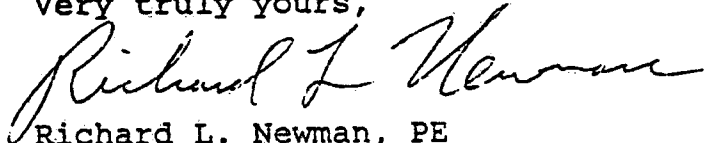
My staff visited your facility on January 5, 1990 and verified that the flow study has been underway since December 15, 1989. The water flow diagram in our possession (a copy is attached) was shown to your facility representative and my staff was told that the water flow diagram was outdated.

Please provide this office with the following information:

- (a) The new water flow diagram;
- (b) The name of oil/water separator manufacturer, model and catalog Number and the oil/water separator design calculations;
- (c) Describe the operation of the oil/water separator system which is fitted with aeration and precipitation tanks. Please provide design drawings and sketches of the system for our review.

Attached is a copy of the inspection report. If you have any questions, please contact Mr. Joseph Mandala or me at (718) 482 4933.

Very truly yours,



Richard L. Newman, PE  
Regional Water Program  
Director

VA:va

**KARTIGANER  
ASSOCIATES, P.C.  
CONSULTING ENGINEERS**

**RECEIVED**

N.Y.S.D.E.C. - REGION 2

FEB 06 1990

PURE WATERS

555 BLOOMING GROVE TURNPIKE • NEWBURGH, NY 12550-7896 • [914] 562 - 4391

CERTIFIED R.R.R.

31 January 1990

New York State Department of Environmental Conservation  
47-40 21st Street  
Long Island City, New York 11101

ATTENTION: RICHARD L. NEWMAN, P.E.  
REGIONAL WATER ENGINEER

SUBJECT: BCF OIL REFINING, INC.  
360 MASPETH AVENUE  
BROOKLYN, NEW YORK  
SPDES PERMIT NO. NY0036609  
RECONNAISSANCE INSPECTION - 9 NOVEMBER 1989  
5 JANUARY 1990

Dear Mr. Newman:

We acknowledge receipt of your 9 January 1990 letter regarding your reconnaissance inspections at the SUBJECT facility. We offer the following comments in response to the items presented:

1. METALS NONCOMPLIANCE

As outlined in my letters of 9 June 1989, 5 September 1989 and 15 November 1989, the facility, in conjunction with this office, developed a monitoring program and has taken corrective actions to reduce the metal concentrations in the facility's treatment system. A review of the monthly DMR's from August 1989 to date indicate compliance with all metal Permit limits. The facility is continuing its monitoring investigation to insure compliance with all SPDES Permit requirements.

2. PCB ANALYTICAL REPORTING

This office contacted Schwarzkopf Microanalytical Laboratory to discuss the PCB analytical results reported on the July 1989 and October 1989 monthly DMR's. Please find attached a revised analytical report for July 1989 indicating a result of less than 1 ppb. Also attached is the laboratory's explanation of the October 1989 analytical result in which indicates that only a minimum detection limit of less than 10 ppb was achievable as the result of sample/instrument interferences.



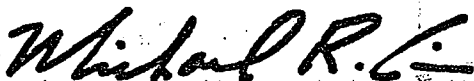
Further discussions with the laboratory involved the required method detection limits for PCB testing as well as the laboratory's responsibilities with regard to notification and documentation of sample analysis conducted by their company. Mr. Edmund Petro, Technical Director of the laboratory, has indicated to me that the detection limits outlined in your 9 January 1990 letter is achievable by his laboratory and also any future interferences that may occur in the sample will be documented accordingly.

3. Please find attached an updated flow schematic for the wastewater treatment chain at the facility. The updated schematic includes the new McTighe oil/water separator which was installed in January of 1988. You will also notice that discharge 001 has been diverted into the middle of the treatment chain thereby eliminating the direct discharge into Newtown Creek. The exact date of this alteration is unknown, however it was brought to the Department's attention in the facility's SPDES renewal application. We therefore request that all sampling with regard to discharge 001 be discontinued because it is now being sent through the main treatment chain which is the subject of testing for discharge 002. By continuing the testing of water from that existing separator, we are more or less duplicating analytical work. If you have no objections to the discontinuance of this testing, we would therefore propose to stop beginning in February 1990. If this is unacceptable, I request that you advise either BCF or myself accordingly.

Should you have any questions or constructive comments with regard to this matter or wish to discuss it in further detail, please feel free to contact me at the above address.

Very truly yours,

KARTIGANER ASSOCIATES, P.C.



Michael R. Cain, P.E.  
Project Engineer

cc: BCF Oil Refining, Inc.

Encl. a/s  
MRC:lmm



# PERMIT

Under the Environmental Conservation Law (ECL)

DEC PERMIT NUMBER

2-6101-00075/00001-0

FACILITY/PROGRAM NUMBER(s)

Solid Waste Program No.  
24001

SPDES No. NY-0036609

EFFECTIVE DATE

21 August 1992

EXPIRATION DATE

21 August 1995

TYPE OF PERMIT (Check All Applicable Boxes)

☒ New☐ Renewal☐ Modification☒ Permit to Construct☒ Permit to Operate☐ Article 15, Title 5:  
Protection of Water☒ Article 17, Titles 7, 8:  
SPDES☐ Article 27, Title 9; 6NYCRR 373:  
Hazardous Waste Management☐ Article 15, Title 15:  
Water Supply☐ Article 19:  
Air Pollution Control☐ Article 34:  
Coastal Erosion Management☐ Article 15, Title 15:  
Water Transport☐ Article 23, Title 27:  
Mined Land Reclamation☐ Article 36:  
Floodplain Management☐ Article 15, Title 15:  
Long Island Wells☐ Article 24:  
Freshwater Wetlands☐ Articles 1, 3, 17, 19, 27, 37;  
6NYCRR 380: Radiation Control☐ Article 15, Title 27:  
Wild, Scenic and Recreational  
Rivers☐ Article 25:  
Tidal Wetlands☐ Other: \_\_\_\_\_☐ 6NYCRR 608:  
Water Quality Certification☒ Article 27, Title 7; 6NYCRR 360:  
Solid Waste Management

PERMIT ISSUED TO

BCF Oil Refining, Inc.

TELEPHONE NUMBER

(718) 387-8300

ADDRESS OF PERMITTEE

360 Maspeth Avenue, Brooklyn, NY 11211

CONTACT PERSON FOR PERMITTED WORK

Salvatore Cortese, President

TELEPHONE NUMBER

(718) 387-8300

NAME AND ADDRESS OF PROJECT/FACILITY

Same as above

LOCATION OF PROJECT/FACILITY

Same as above

COUNTY

Kings

TOWN/CITY/VILLAGE

New York City

WATERCOURSE/WETLAND NO.

Newtown Creek

NYTM COORDINATES

E 590.0 N 4 507.8

DESCRIPTION OF AUTHORIZED ACTIVITY

Construction and operation of a waste oil storage and reprocessing facility handling an average of 50,000 gallons per day of waste fuel oil, motor oil, and oil-contaminated water. Maximum storage capacity is 800,000 gallons in 15 tanks. Reprocessing consists of screening, dewatering, and blending. Reprocessed oil will be sold as fuel oil to be burned in industrial, commercial, or apartment building boilers, as prescribed by law. Process residue will be transported by licensed waste haulers to an authorized hazardous waste disposal facility. Process wastewater will be treated in an oil-water separator and discharged to Newtown Creek.

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, the General Conditions specified (See Reverse Side) and any Special Conditions included as part of this permit.

PERMIT ADMINISTRATOR

John J. Ferguson

ADDRESS DEC Region 2 Office, 47-40 21st Street,  
Long Island City, NY 11101

(718) 482-4997

AUTHORIZED SIGNATURE

DATE

21 August 1992

Page 1 of 8

DEPUTY REGIONAL PERMIT ADMINISTRATOR

## SPECIAL CONDITIONS

For Article 27 ( Title 7; Solid Waste Management )

1. This permit does not relieve the permittee from its obligations to obtain any other permits or licenses required by other federal, state or local governmental agencies.
2. This non-hazardous-waste oil facility shall be operated in strict accordance with all sections of the current 6 NYCRR Part 360 regulations and the complete BCF Oil Refining Part 360 permit application.
3. The permittee shall allow inspection of the facility and all records by duly authorized and appointed inspectors of the NYSDEC. These inspections may be scheduled in advanced or unannounced.
4. The facility shall provide precision or alternative internal inspections done in accordance with NYSDEC regulations and policy, for all of BCF's underground tanks and piping that store or handle petroleum including process, flow through process, and field constructed tanks. The minimum frequency for these inspections is to follow the USEPA's frequency for the testing of underground tanks under the UST program (40 CFR Part 280). All aboveground tanks should be tested every 10 years. All structural, corrosion, and tightness inspections shall be performed according to standard industry accepted practices ("Tank Inspection, Repair, Alteration and Reconstruction", American Petroleum Institute's Standard 653 and Chapter XIII of the American Institute's Guide to the Inspection of Refinery Equipment"). All testing shall be performed by qualified personnel. Permittee shall submit with its annual report a description of the dates, methods, and protocols used to comply with this requirement, and copies of the results of all inspections and tests.

In addition to the above requirement, the permittee shall comply with the following tank testing schedule:

Tank Testing Schedule

<u>Y/E 12/31</u>	<u>Tank #s</u>
1992.....	1,2,5,10,11 12,14,15
1993.....	3,7,17,18
1994.....	6,9
1995.....	4,8
1997.....	16

BCF Oil Refining, Inc.

 DEC PERMIT NUMBER  
 2-6101-00075/00001-0

 FACILITY ID NUMBER  
 SPDES No. NY-0036609

 PROGRAM NUMBER  
 Solid Waste No. 24001
Page 3 of 8

## SPECIAL CONDITIONS

For Article 27 ( Title 7; Solid Waste Management )

If these inspections, the leak detection systems, or the groundwater wells indicate that the tanks are leaking, the permittee must immediately locate the sources of the petroleum contamination. After the source is found, the facility must repair, replace or permanently close the leaking system in a manner approved by DEC. Within 15 days of any detection of petroleum leakage, the Regional Solid Waste Engineer and Regional Water Engineer shall be notified by the permittee about the leak, and about measures proposed to investigate and remediate said leak.

5. Permittee shall file quarterly and yearly reports, which shall be sent to the Regional Solid Waste Engineer located at NYSDEC, 47-40 21st Street, LIC, NY, 11101 and to the NYSDEC Central Office located at Bureau of Waste Reduction and Recycling, Division of Solid Waste, NYSDEC, 50 Wolf Road, Albany, NY 12233. The quarterly reports shall be sent no later than 20 days after each of the calendar quarters [January 1, April 1, July 1, and October 1], and the yearly report no later than 60 days after the calendar year. Each of the reports shall include at a minimum:

(i) facility name, address, contact person, phone number and location;

(ii) a listing of each storage tank/trailer and its capacity;

(iii) a listing of all incoming loads, with a summary on a monthly basis, which shall, at a minimum, include the name and address of the originating facility and/or transporter including its Part 364 permit number, date and time of shipment, quantity and type of oil shipped (on-specification, off-specification, tank bottoms, crank case, water, etc.), and the results of the on site screening tests [halogens and flash point], and the QA/QC results for halogens, PCBs and flashpoint.

Also, each report shall include a listing of the outgoing loads, with a summary on a monthly basis, which shall, at a minimum, include the name and address of the transporter and/or the receiving facility, the date and time of shipment, and the quantity of oil shipped;

(iv) if any chemical analysis was conducted on the used oil received or shipped from facility, a tabulation of the data from those analysis and associated total halogen screening data;

BCF Oil Refining, Inc.

DEC PERMIT NUMBER  
2-6101-00075/00001-0

FACILITY ID NUMBER  
SPDES No. NY-0036609

PROGRAM NUMBER  
Solid Waste No. 24001

Page 4 of 8

## SPECIAL CONDITIONS

For Article 27 ( Title 7; Solid Waste Management )

(v) a description of any spills or emergencies that occurred at the facility and the corrective actions taken to correct each such problem;

(vi) a list of any unacceptable waste that was received by the facility, its volume, type, origin, and how it was handled and lawfully disposed of; and

(vii) a description of any changes made to the facility.

6. Every load that enters the facility shall be tested by the Clor-D-Tect Kit Test for halogens. If the level of halogens is found to be excess of 1000 ppm, the used oil may not be accepted at the facility unless an additional analysis is performed to indicate the specific halogens present and the analytical results indicate that the specific halogens are not considered hazardous waste. If the screening or analysis for halogens is not routinely conducted in a Department-acceptable laboratory, split-samples must be conducted on a minimum of five percent of the incoming loads and be sent to a Department-acceptable laboratory for analysis of total halogens, PCBs, and flash point.

7. Before closing any of the tanks or the taking of samples during closure, DEC must be notified at least 15 days beforehand of the time and date of when pre-closure tank sampling will occur to allow DEC staff to be present at that time. Also, DEC shall be notified in writing of each tank closure, and copies of closure verifications for each tank and the facility shall be sent to the Regional Solid Waste Engineer and the Regional Water Engineer.

8. Permittee shall maintain an operating record for incoming and outgoing loads of used oil. Said record shall, at a minimum, include the name and address of the originating facility, date of shipment, and quantity shipped. Copies of all invoices shall be maintained at the facility. In addition, records of inspections and any spills or other emergencies must be maintained.

9. The facility is allowed to accept water that has trace levels of gasoline, but said water shall have a flash point of greater than 110°F.

10. If the permittee, during the course of performing the screening tests, finds that a load is unacceptable due to the waste oil having a flash point less than 110°F or more than 1000 PPM of total halogens, the facility shall report the incident immediately to the Regional Solid Waste Engineer and make a record of said

BCF Oil Refining, Inc.

DEC PERMIT NUMBER

2-6101-00075/00001-0

FACILITY ID NUMBER

SPDES No. NY-0036609

PROGRAM NUMBER

Solid Waste No. 24001



Page 5 of 8

## SPECIAL CONDITIONS

For Article 27 ( Title 7; Solid Waste Management )

incident, including, at a minimum, the time and date of the incident, the screening results, the quantity of material, the name of the hauler and his Part 364 permit number, and the how the hauler stated that he would properly dispose of the unacceptable waste oil. Said data must be reported during the quarterly and yearly reports in addition to the requirements of Special Condition No. 5 above.

11. When permittee removes sludge from its waste oil tanks, the sludge shall be contained to prevent leakage of any kind. After sludge is removed from the tanks, it must be removed from the facility within 30 days. Permittee shall maintain a record of each such sludge removal with the time, date, hauler, quantity, and final disposal facility of the sludge. Said record shall be submitted to DEC in the next quarterly report after each sludge removal, along with the supporting documentation.

12. Under no condition shall the permittee use, activate, or do any work on the barge/dock area without first receiving the required permits, including modification of this Part 360 Solid Waste Management Facility permit, from DEC.

13. Permittee shall immediately submit to DEC a performance bond or letter of credit in the favor of DEC in the amount of at least \$175,000 to provide adequate security for any legally required remedial work or penalties incurred from operating the facility in violation of the Environmental Conservation Law. Said bond or letter must be replaced within 90 days of the date of this permit with a performance bond or letter of credit in the favor of DEC in the amount of at least \$200,000.

14. Permittee shall submit to the Regional Solid Waste Engineer and Regional Water Engineer the results of the monthly monitoring of the well samples, as required in their MOSF license, in the appropriate quarterly report.

15. Within 30 days after the effective date of this permit, permittee shall submit to DEC a material and energy qualitative and quantitative flow diagram for the facility.

16. The facility shall be constructed according to the most recent versions of the plans and reports submitted on behalf of the applicant by Kartiganer Associates, P. C., Consulting Engineers, and all other reports. plans, correspondence, and other application materials submitted to DEC to date in support of the application to construct and operate the facility. If any provision of any

BCF Oil Refining, Inc.

DEC PERMIT NUMBER  
2-6101-00075/00001-0FACILITY ID NUMBER  
SPDES No. NY-0036609PROGRAM NUMBER  
Solid Waste No. 24001Page 6 of 8

## SPECIAL CONDITIONS

For Article 27 ( Title 7; Solid Waste Management )

material submitted in support of this application conflicts with any provision in this permit or any other provision in said application material, the more restrictive and environmentally protective provision shall apply.

17. All construction required by this permit to bring the facility into conformance with the site plans and other application materials shall be completed within ninety (90) days after the effective date of this permit. Within ten (10) days after the completion of construction authorized and required by this permit, permittee shall have a professional engineer licensed to practice in the State of New York submit to DEC signed and sealed certification that the facility is constructed in conformance with the site plans and documents described in Special Condition No. 16 above, and with the permit conditions herein.

18. Within thirty (30) days after the effective date of this permit, permittee shall pay to the New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233-5022, Attention: K. Mohan, a sum of \$25,000 (in the form of a certified check or money order) to be placed in an account for DEC's compliance and monitoring activities for this permitted facility. Monies from said sum shall be applied for payment of the first-year costs of said compliance and monitoring activities, and shall be subject to quarterly revision by DEC. Subsequent quarterly payments shall be made by permittee for the duration of the permit, to provide an account balance sufficient to maintain the annual cost assessment for compliance and monitoring activities by DEC at the facility.

Quarterly payments shall be made by the permittee to DEC based on the following costs: (i) direct personal service costs and fringe benefits, including the cost of replacement personnel for the assigned monitor position; (ii) direct non-personal service costs, including, but not limited to, equipment, transportation costs, training, and laboratory analysis fees directly related to permittee's facility; (iii) inflation and negotiated salary increases; and (iv) overhead and support costs at a calculated indirect cost rate based on a federally approved plan.

Within thirty (30) days after receipt of a quarterly statement from DEC, the permittee shall forward the amount due to DEC at the address given above.

DEC PERMIT NUMBER  
2-6101-00075/00001-0

BCF Oil Refining, Inc.

FACILITY ID NUMBER  
SPDES No. NY-0036609

PROGRAM NUMBER  
Solid Waste No. 24001



Page 7 of 8

## SPECIAL CONDITIONS

For Article 27 ( Title 7: Solid Waste Management )

Upon termination of this permit, and the payment of all outstanding costs, the unexpended balance will be returned to the permittee.

DEC may take appropriate action to enforce the payment provisions of this special condition.

BCF Oil Refining, Inc.

DEC PERMIT NUMBER

2-6101-00075/00001-0

FACILITY ID NUMBER

SPDES No. NY-0036609

PROGRAM NUMBER

Solid Waste No. 24001

Page 8 of 8



New York State  
Department of Environmental Conservation



# NOTICE



The Department of Environmental Conservation (DEC) has issued permit(s) pursuant to the Environmental Conservation Law for work being conducted at this site. For further information regarding the nature and extent of work approved and any Departmental conditions on it, contact the Regional Permit Administrator listed below. Please refer to the permit number shown when contacting the DEC.

Permit Number 2-6101-00075/00001-0

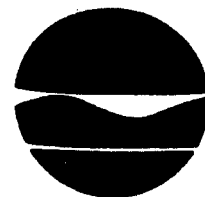
Expiration Date 21 August 1995

John J. Ferguson  
Regional Permit Administrator  
DEC Region 2 Office  
47-40 21st Street  
Long Island City, NY 11101  
  
(718) 482-4997

NOTE: This notice is NOT a permit

240059

New York State Department of Environmental Conservation  
47-40 21st Street, Long Island City, New York 11101



Thomas C. Jorling  
Commissioner

21 August 1992

Salvatore Cortese, President  
BCF Oil Refining, Inc.  
360 Maspeth Avenue  
Brooklyn, NY 11211

Re: DEC Permit No. 2-6101-00075/00001-0;  
BCF Oil Refining, Inc., Maspeth, Brooklyn  
Article 17, Titles 7 and 8 -- SPDES  
Article 27, Title 7 -- Solid Waste Management

Dear Mr. Cortese:

Enclosed is your permit. Please read all conditions carefully. Please also give a full copy of this permit to all agents and employees performing any part of the permitted activities.

If you have any questions regarding your permit, please call me at (718) 482-4997.

Very truly yours,

John F. Cryan  
Deputy Regional Permit Administrator

cc: SPDES Mailing List  
R. Newman, P. E., Region 2 Water Engineer  
R. Bruzzone, P. E., Region 2 Solid Waste Engineer  
✓ K. Brezner, Region 2 Division of Solid Waste

encl.

JFC:bh

(WP51/PERMIT.LET)

**RECEIVED**  
N.Y.S.D.E.C. - REGION 2

AUG 24 1992

SOLID WASTE

DEC PERMIT NUMBER

2-6101-00075/00001-0

FACILITY/PROGRAM NUMBER(S)

Solid Waste Program No.

24001

SPDES No. NY-0036609

## PERMIT

Under the Environmental Conservation Law (ECL)

EFFECTIVE DATE

21 August 1992

EXPIRATION DATE

21 August 1995

TYPE OF PERMIT (Check All Applicable Boxes)

☒ New☐ Renewal☐ Modification☒ Permit to Construct☒ Permit to Operate

- ☐ Article 15, Title 5:  
Protection of Water
- ☐ Article 15, Title 15:  
Water Supply
- ☐ Article 15, Title 15:  
Water Transport
- ☐ Article 15, Title 15:  
Long Island Wells
- ☐ Article 15, Title 27:  
Wild, Scenic and Recreational  
Rivers
- ☐ 6NYCRR 608:  
Water Quality Certification

- ☒ Article 17, Titles 7, 8:  
SPDES
- ☐ Article 19:  
Air Pollution Control
- ☐ Article 23, Title 27:  
Mined Land Reclamation
- ☐ Article 24:  
Freshwater Wetlands
- ☐ Article 25:  
Tidal Wetlands
- ☒ Article 27, Title 7: 6NYCRR 360:  
Solid Waste Management

- ☐ Article 27, Title 9: 6NYCRR 373:  
Hazardous Waste Management
- ☐ Article 34:  
Coastal Erosion Management
- ☐ Article 36:  
Floodplain Management
- ☐ Articles 1, 3, 17, 19, 27, 37:  
6NYCRR 380: Radiation Control
- ☐ Other: \_\_\_\_\_

PERMIT ISSUED TO <b>BCF Oil Refining, Inc.</b>			TELEPHONE NUMBER <b>(718) 387-8300</b>
ADDRESS OF PERMITTEE <b>360 Maspeth Avenue, Brooklyn, NY 11211</b>			
CONTACT PERSON FOR PERMITTED WORK <b>Salvatore Cortese, President</b>			TELEPHONE NUMBER <b>(718) 387-8300</b>
NAME AND ADDRESS OF PROJECT/FACILITY <b>Same as above</b>			
LOCATION OF PROJECT/FACILITY <b>Same as above</b>			
COUNTY <b>Kings</b>	TOWN/CITY/VILLAGE <b>New York City</b>	WATERCOURSE/WETLAND NO. <b>Newtown Creek</b>	NYTM COORDINATES <b>E: 590.0 N: 4 507.8</b>
DESCRIPTION OF AUTHORIZED ACTIVITY <b>Construction and operation of a waste oil storage and reprocessing facility handling an average of 50,000 gallons per day of waste fuel oil, motor oil, and oil-contaminated water. Maximum storage capacity is 800,000 gallons in 15 tanks. Reprocessing consists of screening, dewatering, and blending. Reprocessed oil will be sold as fuel oil to be burned in industrial, commercial, or apartment building boilers, as prescribed by law. Process residue will be transported by licensed waste haulers to an authorized hazardous waste disposal facility. Process wastewater will be treated in an oil-water separator and discharged to Newtown Creek.</b>			

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, the General Conditions specified (See Reverse Side) and any Special Conditions included as part of this permit.

PERMIT ADMINISTRATOR <b>John J. Ferguson</b>	ADDRESS <b>DEC Region 2 Office, 47-40 21st Street, Long Island City, NY 11101</b>	DATE <b>21 August 1992</b>	Page 1 of <b>8</b>
AUTHORIZED SIGNATURE <i>John J. Ferguson</i>	DEPUTY REGIONAL PERMIT ADMINISTRATOR		

## **GENERAL CONDITIONS**

### **Inspections**

1. The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3). A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

### **Permit Changes and Renewals**

2. The Department reserves the right to modify, suspend or revoke this permit when:
  - a) the scope of the permitted activity is exceeded or a violation of any condition of the permit or provisions of the ECL and pertinent regulations is found;
  - b) the permit was obtained by misrepresentation or failure to disclose relevant facts;
  - c) new material information is discovered; or
  - d) environmental conditions, relevant technology, or applicable law or regulation have materially changed since the permit was issued.
3. The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms, fees or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.
4. The permittee must submit a renewal application at least:
  - a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities (HWMF), major Air Pollution Control (APC) and Solid Waste Management Facilities (SWMF); and
  - b) 30 days before expiration of all other permit types.
5. Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

### **Other Legal Obligations of Permittee**

6. The permittee has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature and by whomever suffered, arising out of the project described in this permit and has agreed to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from this project.
7. This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.
8. The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required for this project.

## SPECIAL CONDITIONS

For Article 27 ( Title 7; Solid Waste Management )

1. This permit does not relieve the permittee from its obligations to obtain any other permits or licenses required by other federal, state or local governmental agencies.
2. This non-hazardous-waste oil facility shall be operated in strict accordance with all sections of the current 6 NYCRR Part 360 regulations and the complete BCF Oil Refining Part 360 permit application.
3. The permittee shall allow inspection of the facility and all records by duty authorized and appointed inspectors of the NYSDEC. These inspections may be scheduled in advanced or unannounced.
4. The facility shall provide precision or alternative internal inspections done in accordance with NYSDEC regulations and policy, for all of BCF's underground tanks and piping that store or handle petroleum including process, flow through process, and field constructed tanks. The minimum frequency for these inspections is to follow the USEPA's frequency for the testing of underground tanks under the UST program (40 CFR Part 280). All aboveground tanks should be tested every 10 years. All structural, corrosion, and tightness inspections shall be performed according to standard industry accepted practices ("Tank Inspection, Repair, Alteration and Reconstruction", American Petroleum Institute's Standard 653 and Chapter XIII of the American Institute's Guide to the Inspection of Refinery Equipment"). All testing shall be performed by qualified personnel. Permittee shall submit with its annual report a description of the dates, methods, and protocols used to comply with this requirement, and copies of the results of all inspections and tests.

In addition to the above requirement, the permittee shall comply with the following tank testing schedule:

Tank Testing Schedule

<u>Y/E 12/31</u>	<u>Tank #s</u>
1992.....	1,2,5,10,11 12,14,15
1993.....	3,7,17,18
1994.....	6,9
1995.....	4,8
1997.....	16

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If these inspections, the leak detection systems, or the groundwater wells indicate that the tanks are leaking, the permittee must immediately locate the sources of the petroleum contamination. After the source is found, the facility must repair, replace or permanently close the leaking system in a manner approved by DEC. Within 15 days of any detection of petroleum leakage, the Regional Solid Waste Engineer and Regional Water Engineer shall be notified by the permittee about the leak, and about measures proposed to investigate and remediate said leak.

5. Permittee shall file quarterly and yearly reports, which shall be sent to the Regional Solid Waste Engineer located at NYSDEC, 47-40 21st Street, LIC, NY, 11101 and to the NYSDEC Central Office located at Bureau of Waste Reduction and Recycling, Division of Solid Waste, NYSDEC, 50 Wolf Road, Albany, NY 12233. The quarterly reports shall be sent no later than 20 days after each of the calendar quarters [January 1, April 1, July 1, and October 1], and the yearly report no later than 60 days after the calendar year. Each of the reports shall include at a minimum:

(i) facility name, address, contact person, phone number and location;

(ii) a listing of each storage tank/trailer and its capacity;

(iii) a listing of all incoming loads, with a summary on a monthly basis, which shall, at a minimum, include the name and address of the originating facility and/or transporter including its Part 364 permit number, date and time of shipment, quantity and type of oil shipped (on-specification, off-specification, tank bottoms, crank case, water, etc.), and the results of the on site screening tests [halogens and flash point], and the QA/QC results for halogens, PCBs and flashpoint.

Also, each report shall include a listing of the outgoing loads, with a summary on a monthly basis, which shall, at a minimum, include the name and address of the transporter and/or the receiving facility, the date and time of shipment, and the quantity of oil shipped;

(iv) if any chemical analysis was conducted on the used oil received or shipped from facility, a tabulation of the data from those analysis and associated total halogen screening data;

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(v) a description of any spills or emergencies that occurred at the facility and the corrective actions taken to correct each such problem;

(vi) a list of any unacceptable waste that was received by the facility, its volume, type, origin, and how it was handled and lawfully disposed of; and

(vii) a description of any changes made to the facility.

6. Every load that enters the facility shall be tested by the Clor-D-Tect Kit Test for halogens. If the level of halogens is found to be excess of 1000 ppm, the used oil may not be accepted at the facility unless an additional analysis is performed to indicate the specific halogens present and the analytical results indicate that the specific halogens are not considered hazardous waste. If the screening or analysis for halogens is not routinely conducted in a Department-acceptable laboratory, split-samples must be conducted on a minimum of five percent of the incoming loads and be sent to a Department-acceptable laboratory for analysis of total halogens, PCBs, and flash point.

7. Before closing any of the tanks or the taking of samples during closure, DEC must be notified at least 15 days beforehand of the time and date of when pre-closure tank sampling will occur to allow DEC staff to be present at that time. Also, DEC shall be notified in writing of each tank closure, and copies of closure verifications for each tank and the facility shall be sent to the Regional Solid Waste Engineer and the Regional Water Engineer.

8. Permittee shall maintain an operating record for incoming and outgoing loads of used oil. Said record shall, at a minimum, include the name and address of the originating facility, date of shipment, and quantity shipped. Copies of all invoices shall be maintained at the facility. In addition, records of inspections and any spills or other emergencies must be maintained.

9. The facility is allowed to accept water that has trace levels of gasoline, but said water shall have a flash point of greater than 110°F.

10. If the permittee, during the course of performing the screening tests, finds that a load is unacceptable due to the waste oil having a flash point less than 110°F or more than 1000 PPM of total halogens, the facility shall report the incident immediately to the Regional Solid Waste Engineer and make a record of said

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incident, including, at a minimum, the time and date of the incident, the screening results, the quantity of material, the name of the hauler and his Part 364 permit number, and the how the hauler stated that he would properly dispose of the unacceptable waste oil. Said data must be reported during the quarterly and yearly reports in addition to the requirements of Special Condition No. 5 above.

11. When permittee removes sludge from its waste oil tanks, the sludge shall be contained to prevent leakage of any kind. After sludge is removed from the tanks, it must be removed from the facility within 30 days. Permittee shall maintain a record of each such sludge removal with the time, date, hauler, quantity, and final disposal facility of the sludge. Said record shall be submitted to DEC in the next quarterly report after each sludge removal, along with the supporting documentation.

12. Under no condition shall the permittee use, activate, or do any work on the barge/dock area without first receiving the required permits, including modification of this Part 360 Solid Waste Management Facility permit, from DEC.

13. Permittee shall immediately submit to DEC a performance bond or letter of credit in the favor of DEC in the amount of at least \$175,000 to provide adequate security for any legally required remedial work or penalties incurred from operating the facility in violation of the Environmental Conservation Law. Said bond or letter must be replaced within 90 days of the date of this permit with a performance bond or letter of credit in the favor of DEC in the amount of at least \$200,000.

14. Permittee shall submit to the Regional Solid Waste Engineer and Regional Water Engineer the results of the monthly monitoring of the well samples, as required in their MOSF license, in the appropriate quarterly report.

15. Within 30 days after the effective date of this permit, permittee shall submit to DEC a material and energy qualitative and quantitative flow diagram for the facility.

16. The facility shall be constructed according to the most recent versions of the plans and reports submitted on behalf of the applicant by Kartiganer Associates, P. C., Consulting Engineers, and all other reports, plans, correspondence, and other application materials submitted to DEC to date in support of the application to construct and operate the facility. If any provision of any

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material submitted in support of this application conflicts with any provision in this permit or any other provision in said application material, the more restrictive and environmentally protective provision shall apply.

17. All construction required by this permit to bring the facility into conformance with the site plans and other application materials shall be completed within ninety (90) days after the effective date of this permit. Within ten (10) days after the completion of construction authorized and required by this permit, permittee shall have a professional engineer licensed to practice in the State of New York submit to DEC signed and sealed certification that the facility is constructed in conformance with the site plans and documents described in Special Condition No. 16 above, and with the permit conditions herein.

18. Within thirty (30) days after the effective date of this permit, permittee shall pay to the New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233-5022, Attention: K. Mohan, a sum of \$25,000 (in the form of a certified check or money order) to be placed in an account for DEC's compliance and monitoring activities for this permitted facility. Monies from said sum shall be applied for payment of the first-year costs of said compliance and monitoring activities, and shall be subject to quarterly revision by DEC. Subsequent quarterly payments shall be made by permittee for the duration of the permit, to provide an account balance sufficient to maintain the annual cost assessment for compliance and monitoring activities by DEC at the facility.

Quarterly payments shall be made by the permittee to DEC based on the following costs: (i) direct personal service costs and fringe benefits, including the cost of replacement personnel for the assigned monitor position; (ii) direct non-personal service costs, including, but not limited to, equipment, transportation costs, training, and laboratory analysis fees directly related to permittee's facility; (iii) inflation and negotiated salary increases; and (iv) overhead and support costs at a calculated indirect cost rate based on a federally approved plan.

Within thirty (30) days after receipt of a quarterly statement from DEC, the permittee shall forward the amount due to DEC at the address given above.

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Upon termination of this permit, and the payment of all outstanding costs, the unexpended balance will be returned to the permittee.

DEC may take appropriate action to enforce the payment provisions of this special condition.

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